

HOUSE No. 85

Accompanying the twenty-first recommendation of the State Treasurer and Receiver General
(House, No. 65). Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

AN ACT RELATIVE TO PROVIDING FOR THE SECURITY OF PUBLIC DEPOSITS.

Whereas, delay in the implementation of this act would tend to defeat its purpose, which is to provide a uniform law for the prudent protection of the bank deposits of the commonwealth and its agencies and public authorities, and of commonwealth cities, towns, districts, and regional school districts, so that the public deposits will be secured against loss in the event of the insolvency, dissolution, appointment of a receiver or conservator, or the occurrence of any other event effecting the ability of a depository institution holding a public deposit to pay such deposit on demand or at maturity.

Therefore, it is hereby declared that this act is an emergency law, necessary for the immediate preservation of the public safety and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. *Amendment of Section 34 of Chapter 29.* Section 34 of chapter 29 of the
2 general laws as most recently amended by Stat. 2006, c. 139, §38, is hereby amended by inserting
3 in place thereof, the following new section 34:

4 Section 34. (a) Public depositors, as defined in section 34A of this chapter, may deposit a
5 portion of the public monies in their possession in qualified depository banks, as defined in
6 section 34A of this chapter. The aggregate balance on deposit in any one such qualified
7 depository bank by the state treasurer, by a state officer of funds advanced under section 23, by a
8 state officer, department, institution or other agency of fees or other money as referred to in
9 section 27 of chapter 30 shall not exceed, as of the close of the business each business day, 55 per
10 cent of the qualified depository bank's paid up capital, surplus, capital notes, and undivided
11 profits in accordance with the records of the qualified depository bank. All certificates of deposit
12 of the depository institution, whether issued directly to the state treasurer or purchased on the
13 open market, shall be considered deposits within the meaning of this section. For the purpose of
14 paying the principal or interest due on any bond, note or other obligation of the commonwealth,
15 which is payable in the city of New York or the city of Chicago, the state treasurer may keep on

deposit in those cities in a national bank, federal savings bank, federal savings and loan association, trust company, savings bank, savings and loan association, building and loan association, cooperative bank, industrial bank or other depository institution chartered and regulated under the laws of the federal government or the states of New York and Illinois, the deposits of which are insured by the Federal Deposit Insurance Corporation, approved for the purpose by the governor and council, a sum not exceeding in the aggregate \$25,000; provided, that for a period of seven days before the date of the payment, the amount may be increased by a sum sufficient to cover the same.

(b) A public depositor or any other public officer who knowingly makes a deposit in violation of sections 34 to 34D of this chapter shall be guilty of misconduct and mal-administration in his or her office. Any depository institution that knowingly receives a public deposit in violation of sections 34 to 34D of this chapter, in addition to any other civil or criminal penalties that may apply, shall be disqualified from (1) receiving any public deposits under this chapter or under chapter 44 and (2) entering into any contract with the commonwealth or any of its cities, towns, districts, or regional school districts, or any other public agency of the commonwealth, for a period of three years from the date of the deposit.

(c) All interest received on any deposits of any officer or employee of the commonwealth or the commonwealth's departments, agencies, public authorities or institutions under this section shall be paid to the commonwealth.

SECTION 2. *New Sections 34A to 34D Of Chapter 29.* Chapter 29 of the general laws is hereby amended by inserting the following new sections 34A to 34D after section 34, as amended:

Section 34A. Definitions. The following definitions shall apply to section 34 to 34D of this chapter:

“Custodian” means (a) a bank, trust company, or other securities intermediary, as defined in section 8-102 of chapter 106 of the general laws, that is independent of the qualified depository bank and approved by the public depositor, or (b) a federal reserve bank or federal home loan bank. The custodian shall maintain separate, accurate, and complete records related to pledged collateral and shall provide the public depositor with collateral statements on a regular basis, but in no event less frequently than monthly; provided, however, that the custodian shall provide the public depositor with a statement of eligible collateral as soon as possible after receipt of a demand for a statement by the public depositor or the state treasurer and, in the case of a qualified depository bank, trust company, or clearing corporation, no more than two business days after such demand.

“Default” means, but shall not be limited to, the failure or refusal of any qualified depository bank to return any public deposit upon demand or at maturity or the issuance of an order of any supervisory authority restraining such qualified depository bank from making payments of deposit liabilities, or the appointment of a receiver or conservator of such qualified depository bank, or the occurrence of any other event effecting the ability of a qualified depository bank to pay any public deposit on demand or at maturity.

“Depository pledge agreement” means a three-party agreement, however titled, between a public depositor, a qualified depository bank, and a custodian that provides for (a) a pledge of, and security interest in eligible collateral and (b) “control,” as defined in section 8-106 of chapter 106 of the general laws, by the public depositor and the right of the public depositor to dispose of the collateral in order to recover the total amount of any uninsured public deposit upon a default by the qualified depository bank. Such agreement shall be (i) signed by an authorized officer of the qualified depository bank; (ii) approved by its board of directors or loan committee, which approval shall be reflected in the minutes of said board or committee; and (iii) continuously maintained in the official records of the qualified depository bank. New securities may be pledged under the depository pledge agreement in substitution of or in addition to securities originally pledged without executing a new agreement.

“Public deposit” means public moneys deposited by a public depositor in a qualified depository bank and shall include all accrued interest and any credits or other additional amounts applicable to the public deposit.

“Public depositor” means any state officer or employee of the commonwealth or its departments, agencies, public authorities, or institutions; and any officer or employee of any county, city, town, or other municipal authority, or public agency, who has authority to receive, hold, and deposit public moneys.

“Qualified depository bank” means any FDIC insured national bank, federal savings bank, or federal savings and loan association, lawfully doing business within the commonwealth, and any trust company, savings bank, or cooperative bank, chartered under the laws of the commonwealth, that is designated by the state treasurer from a list of depositories prepared by the state treasurer and approved at least once in 3 months by the governor and council. The state treasurer shall not include on the list a state-chartered bank having a descriptive rating of (d) or (e) under section 14 of chapter 167 or any federally insured depository institution having an assigned rating of (C) or (D) under section 807(b)(2) of the Community Reinvestment Act of 1977, 12 U.S.C. §§ 2901 to 2908.

83 “State Treasurer” means the Treasurer and Receiver General of the commonwealth or his or
84 her designee.

85 “Uninsured public deposit” means that portion of any public deposit that is in excess of the
86 amount insured by the Federal Deposit Insurance Corporation.

87 Section 34B. Public Deposits to Be Secured. All public deposits shall be secured as
88 provided in section 34C of this chapter.

89 All qualified depository banks located or doing business in the commonwealth are hereby
90 authorized to secure public deposits in accordance with section 34C of this chapter.

91 Section 34C. Authorized Methods of Securing Public Deposits.

92 (a) Collateral Security. A qualified depository bank may secure public deposits by pledging
93 eligible collateral with a custodian in an amount that is no less than 102% of the public
94 depositor’s uninsured public deposit. Prior to making any deposit of public moneys that will be
95 secured by a pledge of eligible collateral, a public depositor shall have entered into a depository
96 pledge agreement with the qualified depository bank and its custodian.

97 The state treasurer may use his or her rulemaking authority to determine a list of eligible
98 collateral if, in his or her judgment, it would be in the best interest of the commonwealth to do so.

99 A security interest that arises out of a pledge of eligible collateral under this section, attaches
100 and is perfected for all purposes under the general laws from the time that a custodian receives
101 and records the collateral on its books and records.

102 Eligible collateral shall be valued at market value, and the total market value of eligible
103 collateral pledged in accordance with this chapter shall not be reduced by withdrawal or
104 substitution of securities except by prior authorization, in writing, by the public depositor.

105 The qualified depository bank shall have the right to make substitutions of an equal or greater
106 amount of any eligible collateral at any time.

107 Any income earned on the eligible collateral shall belong to the qualified depository bank
108 without restriction, until the occurrence of a default.

109 (b) Letters of Credit Issued by Federal Home Loan Bank. A qualified depository bank may
110 secure public deposits by the issuance of an irrevocable letter of credit to the public depositor
111 from a federal home loan bank in the amount of the uninsured public deposit.

112 (c) Depositors Insurance Fund and Share Insurance Fund Security. A qualified depository
113 bank may secure public deposits through its membership in the Depositors Insurance Fund or
114 Share Insurance Fund upon providing proof of membership in and coverage of the public deposit
115 by said funds to the state treasurer. Proof of membership and coverage shall be in such form and
116 with such frequency as required by the state treasurer.

(d) Other Security Acceptable to the State Treasurer. A qualified depository bank may apply to use other forms of security for public deposits by submitting a description, payment history, financial strength analysis, and description of risks of such form of security to the state treasurer. The state treasurer may request such additional information as he or she deems appropriate. Once the state treasurer receives and reviews the application of the qualified depository bank, the state treasurer, in his or her sole discretion, shall determine whether such other form of security is acceptable to secure public deposits.

Section 34D. Rules and Regulations. The state treasurer may promulgate such rules and regulations as may be necessary to carry out the provisions of section 34 to 34D of chapter 29 of the general laws.

SECTION 3. *Amendment of Section 55 of Chapter 44.* Section 55 of chapter 44 of the general laws, as most recently amended by Stat. 1996, c. 314, is hereby amended by inserting in place thereof, the following new section 55:

§ 55. Public funds on deposit; limitations; deposits and investments

A city, town, or district or regional school district shall not at any one time have on deposit in a bank or trust company or banking company an amount exceeding sixty per cent of the capital and surplus of such bank or trust company or banking company. The treasurer of any city, town, district or regional school district shall not deposit funds for which he is accountable in any bank, trust company or banking company with which such treasurer is associated as an officer or employee or has been associated as an officer or employee at any time during the three years immediately preceding the date of any such deposit. For the purpose of paying the principal or interest due on any bond, note or other obligation of the city of Boston, which is payable or requested to be paid in the city of New York, the city of Boston may keep on deposit in any national bank or trust company in the city of New York a sum not exceeding in the aggregate twenty-five thousand dollars; provided, that for a period of two weeks prior to the date of any such payment or payments, said amount may be increased by a sum or sums sufficient to cover the same. A treasurer of a city, town, district or regional school district may invest such portion of revenue cash as he shall deem not required to pay expenses until such cash is needed and all or any part of the proceeds from the issue of bonds or notes, prior to their application to the payment of liabilities incurred for the purposes for which the bonds or notes were authorized, in term deposits or certificates of deposit, in trust companies, national banks, savings banks, banking companies or cooperative banks, or in obligations issued or unconditionally guaranteed by the United States government or any agency thereof and having a maturity from date of purchase of one year or less, or in United States government securities or securities of United States

government agencies purchased under an agreement with a trust company, national bank or banking company to repurchase at not less than the original purchase price of said securities on a fixed date, not to exceed ninety days or in shares of beneficial interest issued by money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, operated in accordance with Section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating from at least one nationally recognized statistical rating organization and the purchase price of shares of beneficial interest purchased pursuant to this section shall not include any commission that these companies may charge, or in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine; provided, however, that no temporary notes in anticipation of revenue shall be issued under section four as long as any revenue cash, exclusive of revenue sharing or other revenue cash the use of which is restricted to purposes other than current maintenance expenses, remain so invested.

SECTION 4. *Amendment of Section 55a of Chapter 44.* Section 55A of chapter 44 of the general laws, as most recently amended by Stat. 1980, c. 366, is hereby amended by inserting in place thereof, the following new section 55A:

Section 55A. Liability of depositor for losses due to default; penalty for violation.

(a) A city, town, district or regional school district officer who lawfully and in good faith receives public moneys and makes a public deposit in a qualified depository bank that is secured in accordance with section 55D of this chapter, shall not be personally liable for any loss resulting from a default by such qualified depository bank in the absence of gross negligence, malfeasance, misfeasance, or nonfeasance on his or her part or on the part of his or her assistants or employees.

(b) A public depositor or any other public officer who knowingly makes a deposit in violation of sections 55 to 55E of this chapter shall be guilty of misconduct and mal-administration in his or her office. Any depository institution that knowingly receives a public deposit in violation of sections 55 to 55E of this chapter, in addition to any other civil or criminal penalties that may apply, shall be (1) disqualified from receiving any public deposits under this chapter or under chapter 29 and (2) disqualified from entering into any contract with the commonwealth or any of its cities, towns, districts, or regional school districts, or any other public agency of the commonwealth, for a period of three years from the date of the deposit.

SECTION 5. *New Sections 55b to 55e Of Chapter 44.* Chapter 44 of the general laws is hereby amended by inserting the following new sections 55B to 55E after section 55A:

Section 55B. Definitions. The following definitions shall apply to section 55 to 55E of this chapter:

“Custodian” means (a) a bank, trust company, or other securities intermediary, as defined in section 8-102 of chapter 106 of the general laws, that is independent of the qualified depository bank and approved by the public depositor, or (b) a federal reserve bank or federal home loan bank. The custodian shall maintain separate, accurate, and complete records related to pledged collateral and shall provide the public depositor with collateral statements on a regular basis, but in no event less frequently than monthly; provided, however, that the custodian shall provide the public depositor with a statement of eligible collateral as soon as possible after receipt of a demand for a statement by the public depositor or the state treasurer and, in the case of a qualified depository bank, trust company, or clearing corporation, no more than two business days after such demand.

“Default” means, but shall not be limited to, the failure or refusal of any qualified depository bank to return any public deposit upon demand or at maturity or the issuance of an order of any supervisory authority restraining such qualified depository bank from making payments of deposit liabilities, or the appointment of a receiver or conservator of such qualified depository bank, or the occurrence of any other event effecting the ability of a qualified depository bank to pay any public deposit on demand or at maturity.

“Depository pledge agreement” means a three-party agreement, however titled, between a public depositor, a qualified depository bank, and a custodian that provides for (a) a pledge of, and security interest in eligible collateral and (b) “control,” as defined in section 8-106 of chapter 106 of the general laws, by the public depositor and the right of the public depositor to dispose of the collateral in order to recover the total amount of any uninsured public deposit upon a default by the qualified depository bank. Such agreement shall be (i) signed by an authorized officer of the qualified depository bank; (ii) approved by its board of directors or loan committee, which approval shall be reflected in the minutes of said board or committee; and (iii) continuously maintained in the official records of the qualified depository bank. New securities may be pledged under the depository pledge agreement in substitution of or in addition to securities originally pledged without executing a new agreement.

“Public deposit” means public moneys deposited by a public depositor in a qualified depository bank and shall include all accrued interest and any credits or other additional amounts applicable to the public deposit.

“Public depositor” means any officer or employee of any city, town, district, or regional school district, who has authority to receive, hold, and deposit public moneys.

“Qualified depository bank” means any FDIC insured trust company, national bank, savings bank, banking company or cooperative bank in which a public depositor is permitted to deposit public moneys.

“Uninsured public deposit” means that portion of any public deposit that is in excess of the amount insured by the Federal Deposit Insurance Corporation.

Section 55C. Uninsured Public Deposits to Be Secured. All public deposits shall be secured as provided in section 55D of this chapter.

All qualified depository banks located or doing business in the commonwealth are hereby authorized to secure public deposits in accordance with section 55D of this chapter.

Section 55D. Authorized Methods of Securing Public Deposits.

(a) Collateral Security. A qualified depository bank may secure public deposits by pledging eligible collateral with a custodian in an amount that is no less than 102% of the public depositor’s uninsured public deposit. Prior to making any deposit of public moneys that will be secured by a pledge of eligible collateral, a public depositor shall have entered into a depository pledge agreement with the qualified depository bank and its custodian.

Eligible collateral shall be determined in accordance with the rules and regulations promulgated by the state treasurer pursuant to chapter 29, §34C and §34D of the general laws.

A security interest that arises out of a pledge of eligible collateral under this section, attaches and is perfected for all purposes under the general laws from the time that a custodian receives and records the collateral on its books and records.

Eligible collateral shall be valued at market value, and the total market value of eligible collateral pledged in accordance with this chapter shall not be reduced by withdrawal or substitution of securities except by prior authorization, in writing, by the public depositor.

The qualified depository bank shall have the right to make substitutions of an equal or greater amount of any eligible collateral at any time.

Any income earned on the eligible collateral shall belong to the qualified depository bank without restriction, until the occurrence of a default.

(b) Letters of Credit Issued by Federal Home Loan Bank. A qualified depository bank may secure public deposits by the issuance of an irrevocable letter of credit to the public depositor from a federal home loan bank in the amount of the uninsured public deposit.

(c) Depositors Insurance Fund and Share Insurance Fund Security. A qualified depository bank may secure public deposits through its membership in the Depositors Insurance Fund or Share Insurance Fund upon providing proof of membership in and coverage of the public deposit

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by said funds to the state treasurer. Proof of membership and coverage shall be in such form and with such frequency as required by the state treasurer.

(d) Other Security Acceptable to the State Treasurer. A qualified depository bank may apply to use other forms of security for public deposits by submitting a description, payment history, financial strength analysis, and description of risks of such form of security to the state treasurer. The state treasurer may request such additional information as he or she deems appropriate. Once the state treasurer receives and reviews the application of the qualified depository bank, the state treasurer, in his or her sole discretion after consultation with the commissioner of the department of revenue, shall determine whether such other form of security is acceptable to secure public deposits.

Section 55E. Rules and Regulations. The commissioner of the department of revenue may promulgate such rules and regulations as may be necessary to carry out the provisions of sections 55 to 55E of this chapter, which shall be subject to approval by the state treasurer.

SECTION 6. *Effective Date*. This Act shall become effective on _____, 20__.